

AC 440 (Rev. 10/93) Summons in a Civil Action

United States District Court
SOUTHERN DISTRICT OF NEW YORK

LISA SARRION and
LUIS F. LOZANO,

Plaintiffs,

SUMMONS IN A CIVIL CASE

V.

CASE NUMBER:

U.S. NUCLEAR REGULATORY COMMISSION,
RICHARD A. MERSERVE, Chairman,
GRETA JOY DICUS, NILS J. DIAZ,
EDWARD MCGAFFIGAN, JR., AND JEREMY
S. MERRIFIELD, Commissioner

02 CV 2474

Defendants.

TO: (Name and address of defendant)

U.S. NUCLEAR REGULATORY COMMISSION
No. 1. White Flint North
11555 Rockville Pike
Rockville, Maryland 20852-2738

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

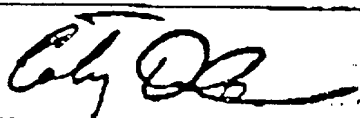
STUART JAY YOUNG, Esq.
65-08 Austin Street
Rego Park, New York 11374

JAMES B. COMEY
U.S. ATTORNEY, SDNY

an answer to the complaint which is herewith served upon you, within Sixty (60) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

JAMES M. PARKISON

CLERK



(BY) DEPUTY CLERK

DATE

(MAR 23) 2022

JAMES B. COMEY
U.S. ATTORNEY, SDNY

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

LISA SARRION and LUIS F. LOZANO,

Plaintiffs,

-against-

02 CV 2474

Dkt. No 02 CV

UNITED STATES NUCLEAR REGULATORY
COMMISSION, RICHARD A. MERSERVE,
Chairman, GRETA JOY DICUS, NILS J. DIAZ,
EDWARD McGAFFIGAN, JR., and JEFFREY
S. MERRIFIELD, COMMISSIONERS.

Defendants.

VERIFIED COMPLAINT
IN THE NATURE OF A
MANDAMUS PURSUANT

28 U.S.C. §1361

MAR 29 2002

Plaintiffs by their counsel, STUART JAY YOUNG, Esq. do hereby show and
allege to this Court as follows:

JURISDICTION

1. Jurisdiction arises and obtains under and pursuant to 28 U.S.C. §1361, a federal statute vesting in U.S. District Courts original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or an agency thereof to perform a duty mandated by law.

PARTIES

2. At all times herein mentioned LISA SARRION and LUIS F. LOZANO were and are natural persons, are United States citizens respectively currently having an office or place of business in and residing in the County of Westchester, State of New York and residing within a radius of about forty-five miles of the town of Buchanan, New York within the County of Westchester, State of New York.

3. At all times herein mentioned defendant UNITED STATES NUCLEAR REGULATORY COMMISSION, ("COMMISSION") was and is a duly and lawfully constituted agency of the Executive Branch of the federal government, having its office and headquarters at No. One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852-2738.

4. At all times herein mentioned the defendants, RICHARD A. MERSERVE, as Chairman, GRETA JOY DICUS, NILS J. DIAZ, EDWARD McGAFFIGAN, JR., and JEFFREY S. MERRIFIELD, were and are duly and lawfully appointed respectively as Chairman and Commissioners of the COMMISSION ("COMMISSIONERS").

5. At all times herein mentioned two nuclear power plants were and are in operation at or near the Town of Buchanan, County of Westchester, State of New York, ("Indian Point").

6. Upon information and belief, the nuclear power plants at Indian Point are owned and/or operated by ENTERGY, a corporation duly licensed and authorized to operate the Indian Point nuclear power plants in the State of New York.

STATEMENT OF FACTS

7. Upon information and belief the defendant COMMISSION is headed by five Commissioners appointed by the President and confirmed by the Senate for five-years terms. One of them is designated by the President to be the Chairman and official spokesperson of the Commission.

8. Upon information and belief the COMMISSION'S statutory function is set forth in the Energy Reorganization Act of 1974 and *inter alia*, is charged with regulating the operation of the 104 nuclear power plants currently in operation throughout the United States in a manner consistent with the safety of its citizens including the plaintiffs. The COMMISSION is a collegial body and formulates policies, develops regulations governing nuclear reactor and nuclear material safety, issues orders to licensees, and adjudicates legal matters. The COMMISSIONERS are charged with the implementation and enforcement of such regulations pursuant to that end.

9. Since the advent of the September 11th, 2001 terrorist attack upon the World Trade Center in New York City, it has become evident from a series of newspaper and television news releases that the federal intelligence community has learned that United States as a nation is under further threat of imminent attack by terrorists and that a series of increasingly deadly and devastating terrorist attacks on specific United States national targets are intended by a worldwide terrorist network. These targets include essential facilities such as bridges, tunnels, dams, water supply systems, high profile buildings and particularly nuclear power plants.

10. Upon information and belief a successful terrorist aerial attack upon a nuclear power plant such as those at Indian Point as hereinbefore alleged, has the potential for releasing deadly radiation with the probability of causing tens of thousands of deaths from radiation sickness and rendering extensive territories of this nation uninhabitable for perhaps hundreds of years. The destructive impact of such an attack upon this nation would by comparison dwarf the devastating effect of the World Trade Center attack.

11. Upon information and belief that in the event of such a successful aerial attack upon a nuclear power plant, the release of deadly radiation as alleged aforesaid would have the potential for causing the death of the plaintiffs and/or their serious and permanent sickness and disability together with the permanent loss of their habitation and place of business.

12. Accordingly, to increase security and protection against such a foregoing disaster and correspondingly to decrease the potential of its occurrence there is an urgent, immediate need for constant, continuous, minute by minute, round the clock, seamless aerial surveillance combined with ability to interdict and prevent aerial attack upon the Indian Point nuclear plants in particular and other nuclear power plants nationwide so as to prevent actual impact by an aerial intruder with the nuclear plant structure.

13. Upon information and belief the Department of Defense has had available to it suitable technology to protect and insulate targets from aerial attack by generating an electronic "shield", "sensory field" or "bubble" to create a "no-fly zone" over potential targets so that an aerial intruder intending to penetrate such a "no-fly zone" would trigger an Surface To Air (SAM) missile retaliatory response which would effectively obliterate

an Surface To Air (SAM) missile retaliatory response which would effectively obliterate the threat before such intruder could intercept its target, thus preventing the intended destructive result.

14. Upon information and belief, notwithstanding the availability of the foregoing technology and perhaps of even more advanced, sophisticated technology now available and suitable to such purpose, no such technology has as yet been installed to protect nuclear facilities generally and the Indian Point nuclear plants in particular from what should long have been (and is now) evident to be a grave threat to the continued existence of this nation, nor have regulations requiring such installation been promulgated by the COMMISSION.

15. Given the national alert now in effect warning of the imminent probability of terrorist attacks and the tragic example of the World Trade Center aerial attack, the foregoing measures when required by COMMISSION regulations and implemented by nuclear plant licensees and/or appropriate federal agencies would constitute reasonable, appropriate and necessary measures incident to the COMMISSION'S legal responsibilities to insure the safe and secure operation of the Indian Point nuclear plants in the context of our government's war on terrorism. Correspondingly, the COMMISSION'S failure or refusal to adopt such regulations and to require their compliance would be entirely unreasonable and in violation of its statutorily mandated responsibilities—and thus the failure to promulgate such regulations would be unlawful.

16. Indeed the continued failure or refusal to promulgate such regulations directing nuclear plant licensees and/or other appropriate federal agencies to do so can only be viewed as a dangerous, impermissible and irresponsible abdication of the COMMISSION'S statutory governmental mandate to protect this nation's citizenry from radiation leaks ensuing from aerial attacks upon nuclear power plants.

17. Upon information and belief the foreseeable consequence of the COMMISSION'S continued failure forthwith to require the installation of this type of technology or of such other available, similar or superior technology to shield nuclear plants from aerial attack will be to expose plaintiffs and indeed thousands of other persons similarly situated to nothing less than an agonizing death in the event of a successful terrorist attack upon the nuclear power plants at Indian Point (Buchanan, New

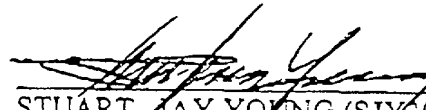
York). Furthermore, in such event vast tracts of New York State including New York City will likely be rendered virtually permanently uninhabitable as would vast territories of other States from attacks on nuclear power plants nationwide, causing political, economic and social crises and chaos of such magnitude as to threaten the very existence of this nation and leaving its very survival in doubt.

WHEREFORE it is respectfully requested that this Court forthwith make and enter an Order/Judgment/Decree pursuant to 28 U.S.C. § 1361

A. Directing the COMMISSION and the COMMISSIONERS forthwith to promulgate and enforce suitable regulations directing the installation with all deliberate speed of appropriate technology herein described as well as other available technology suitable to protect the nuclear power plants at Buchanan, New York in particular and all nuclear power plants nationwide in general from terrorist aerial attack, and

B. For such other, further and different relief as to this Court may seem just and appropriate in the premises.

DATED: Rego Park, New York
March 16th, 2002


STUART JAY YOUNG (SJY3958)
Attorney for Plaintiffs
Office and P.O. Address
65-08 Austin Street
Rego Park, New York 11374
Tel. No. 1(718) 459-6601

TO:
UNITED STATES NUCLEAR REGULATORY
COMMISSION,
RICHARD A. MERSERVE,, Chairman,
GRETA JOY DICUS, Commissioner
NILS J. DIAZ, Commissioner
EDWARD McGAFFIGAN, JR., Commissioner
JEFFREY S. MERRIFIELD, Commissioner
No. One White Flint North,
11555 Rockville Pike,
Rockville, Maryland 20852-2738.

VERIFICATION

STATE OF NEW YORK)
) ss.:
 COUNTY OF WESTCHESTER)

LUIS F. LOZANO, being first duly sworn, does depose and say: I am a Plaintiff in the within action; I have read the foregoing Verified Complaint and know the contents thereof and the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true. The grounds of my belief as to all matters not stated upon my own knowledge are: statements of persons, parties, records and documents.

Luis Lozano

Subscribed and sworn to before me this 22nd
 day of March, 2002

[Signature]
 Notary Public, State of New York

FILED
 MAR 23 2003
 CLERK OF COURT
 WESTCHESTER COUNTY, NEW YORK

STATE OF NEW YORK)
) ss.:
 COUNTY OF WESTCHESTER)

LISA SARRION, being first duly sworn, does depose and say: I am a Plaintiff in the within action; I have read the foregoing Verified Complaint and know the contents thereof and the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true. The grounds of my belief as to all matters not stated upon my own knowledge are: statements of persons, parties, records and documents.

[Signature]

Subscribed and sworn to before me this 22nd
 day of March, 2002

[Signature]
 Notary Public, State of New York

FILED
 MAR 23 2003
 CLERK OF COURT
 WESTCHESTER COUNTY, NEW YORK

File No. 02 CV Year 2002

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKLISA SARRION and LUIS F. LOZANO,
Plaintiffs,

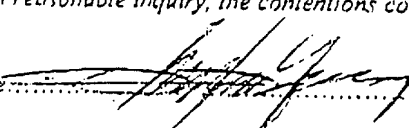
-against-

UNITED STATES NUCLEAR REGULATORY COMMISSION, et al.,
Defendants.VERIFIED COMPLAINT FOR AN ORDER/JUDGMENT/DECREE
PURSUANT TO 28 U.S.C. § 1361Law Offices Of
STUART JAY YOUNG
Plaintiffs65-08 Austin Street
Rego Park, N.Y. 11374
Tel. (718) 459-6601

Attorney for

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated... March 22nd, 2002.

Signature.....

Print Signer's Name...STUART JAY YOUNG.....

Service of a copy of the within
Dated:

is hereby admitted.

.....
Attorney(s) for

PLEASE TAKE NOTICE

Notice of [] that the within is a (certified) true copy of an
Entry entered in the office of the clerk of the within named Court onNotice of [] that an Order of which the within is a true copy will be presented for settlement to the
Settlement
Hon one of the judges of the within named Courtat
on

at

M.

Dated... March 22nd, 2002

Attorney for

Law Offices Of
STUART JAY YOUNG
Plaintiffs
65-08 Austin Street
Rego Park, NY 11374
Tel. (718) 459-6601TO United States Attorneys Office,
Southern District of New York
Attorney for Defendants.

No. 1 St. Andrews Plaza, New York, NY 10007

U.S. Nuclear Regulatory Commission, No. One White Flint North,
11555 Rockville Pike, Rockville, Maryland 20852-2738.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF NEVADA, CLARK
COUNTY, NEVADA, and CITY
OF LAS VEGAS, NEVADA,

Petitioners,

v.

UNITED STATES NUCLEAR
REGULATORY COMMISSION,

Respondent,

Case No. 02-1116

PETITION FOR REVIEW

The State of Nevada, Clark County, Nevada, and the City of Las Vegas, Nevada hereby petition the Court for review of the United States Nuclear Regulatory Commission's ("NRC") rule entitled Disposal of High-Level Radioactive Wastes in a Proposed Geologic Repository at Yucca Mountain, Nevada, 10 C.F.R. Part 63 ("Part 63"). Part 63 is a final rule of the NRC, and it was published in the Federal Register, 66 Fed. Reg. 55,732-55,816, on November 2, 2001. The rule is unlawful and in violation of, inter alia, the Nuclear Waste Policy Act of 1982, as amended. 42 U.S.C. §10101, et seq.

This Court has jurisdiction over this Petition for Review pursuant to Section 119 of the Act, 42 U.S.C. §10139.

WHEREFORE, the State of Nevada, Clark County, Nevada, and the City of Las Vegas, Nevada respectfully requests that the Court, inter alia:

- (1) Grant this Petition for Review;
- (2) Declare that Part 63 is inconsistent with applicable law; and
- (3) Direct the NRC to reissue Part 63 to make it consistent with the NWPA, other applicable laws, and this Court's findings.

Respectfully submitted,

Frankie Sue Del Papa, Attorney General
Marta A. Adams,* Sr. Deputy Attorney General
STATE OF NEVADA
100 North Carson Street
Carson City, NV 89701
(775) 684-1237 TEL
(775) 684-1108 FAX

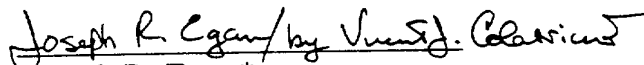
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Bradford R. Jerbic, City Attorney
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William H. Briggs, Jr.*
ROSS, DIXON & BELL, L.L.P.
2001 K Street, N.W.
Washington, D.C. 20006-1040
(202) 662-2063 TEL
(202) 662-2190 FAX

Handwritten signature of Joseph R. Egan, appearing as "Joseph R. Egan / by Vincent J. Colatriano".

Joseph R. Egan*
Counsel of Record
*Attorneys for Petitioners the State of Nevada, Clark
County, Nevada, and the City of Las Vegas, Nevada*

* Member, D.C. Circuit Bar

DATED: April 11, 2002

CERTIFICATE OF SERVICE

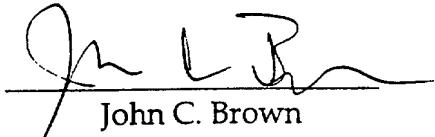
I hereby certify that a true and correct copy of the foregoing document
was served this 11th day of April, 2002 via Certified U.S. Mail upon the
following:

Annette L. Vietti-Cook
Secretary of the Commission
United States Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Room 16 H3, Mail Stop 16 C!
Rockville, MD 20852-2738
301-415-1969

Karen D. Cyr
General Counsel
United States Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Room 16 H3, Mail Stop 16C1
Rockville, MD 20852-2738
301-415-1743

The Honorable John Ashcroft
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Roscoe C. Howard, Jr.
United States Attorney
U.S. Attorney's Office
District of Columbia
Judiciary Center
555 Fourth Street, N.W.
Washington, D.C. 20530


John C. Brown

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Julie A. Teel (CA Bar No. 202282)
2 Earthjustice Environmental Law Clinic
University of Denver-Forbes House
3 1714 Poplar Street
Denver, CO 80220
4 Telephone: (303) 871-6034
Facsimile: (303) 871-6991

5
6 Attorneys for Plaintiffs

7
8 UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
9 SAN FRANCISCO DIVISION

10 CENTER FOR BIOLOGICAL
DIVERSITY,
11 BLUEWATER NETWORK, and
SIERRA CLUB,
12 Plaintiffs,

13 v.

14 SPENCER ABRAHAM, in his
official capacity as Secretary
15 of the U.S. Department of
Energy,
16 U.S. DEPARTMENT OF ENERGY,
DONALD L. EVANS, in his
17 official capacity as Secretary
of the U.S. Department of
18 Commerce,
U.S. DEPARTMENT OF COMMERCE,
19 DONALD H. RUMSFELD, in his
official in his official
20 capacity as Secretary of the
U.S. Department of Defense,
21 U.S. DEPARTMENT OF DEFENSE,
GALE A. NORTON, in her official
22 capacity as Secretary of the
U.S. Department of the
23 Interior,
U.S. DEPARTMENT OF THE

24 Complaint For Declaratory
25 & Injunctive Relief

ORIGINAL
FILED
02 JUN -2 PM 3:05
RECEIVED W. WIEKING
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MEJ

C 02 0027
Civil Action No:

COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF

COPY

1 INTERIOR,
2 JOHN ASHCROFT, in his official
3 capacity as Attorney General of
4 the United States,
5 U.S. DEPARTMENT OF JUSTICE,
6 STEPHEN A. PERRY, in his
7 official capacity as
8 Administrator of the U.S.
9 General Services
10 Administration,
11 U.S. GENERAL SERVICES
12 ADMINISTRATION,
13 ANTHONY J. PRINCIPI, in his
14 official capacity as Secretary
15 of the U.S. Department of
16 Veterans Affairs,
17 U.S. DEPARTMENT OF VETERANS
18 AFFAIRS,
19 NORMAN Y. MINETA, in his
20 official capacity as Secretary
21 of the U.S. Department of
22 Transportation,
23 U.S. DEPARTMENT OF
24 TRANSPORTATION,
25 RICHARD A. MESERVE, in his
official capacity as Chairman
of the U.S. Nuclear Regulatory
Commission,
U.S. NUCLEAR REGULATORY
COMMISSION,
CHRISTINE T. WHITMAN, in her
official capacity as the
Administrator of the U.S.
Environmental Protection
Agency,
U.S. ENVIRONMENTAL PROTECTION
AGENCY,
ANN M. VENEMAN, in her official
capacity as Secretary of the
U.S. Department of Agriculture,
U.S. DEPARTMENT OF AGRICULTURE,
TOMMY G. THOMPSON, in his
official capacity as Secretary
of the U.S. Department of
Health & Human Resources,
U.S. DEPARTMENT OF HEALTH &

Complaint For Declaratory
& Injunctive Relief

1 HUMAN SERVICES,
2 MEL R. MARTINEZ, in his
3 official capacity as Secretary
4 of the U.S. Department of
5 Housing and Urban Development,
6 U.S. DEPARTMENT OF HOUSING AND
7 URBAN DEVELOPMENT,
8 ELAINE L. CHAO, in her official
9 capacity as Secretary of the
10 U.S. Department of Labor,
11 U.S. DEPARTMENT OF LABOR,
12 COLIN L. POWELL, in his
13 official capacity as Secretary
14 of the U.S. Department of
15 State,
16 U.S. DEPARTMENT OF STATE,
17 PAUL H. O'NEILL, in his
18 official capacity as Secretary
19 of the U.S. Department of
20 Treasury,
21 U.S. DEPARTMENT OF TREASURY,
22 DANIEL R. MULVILLE, in his
23 official capacity as Acting
24 Administrator of the National
25 Aeronautics and Space
Administration,
NATIONAL AERONAUTICS AND SPACE
ADMINISTRATION,
JOHN E. POTTER, in his official
capacity as Postmaster General
of the U.S. Postal Service, and
U.S. POSTAL SERVICE,

Defendants.

INTRODUCTION

1. In signing the Energy Policy Act of 1992 into law, former president George H.W. Bush stated "[m]y action today will place America upon a clear path toward a more prosperous, energy efficient, environmentally sensitive, and economically secure future." His hope was short-lived. America strayed far from the "clear path" toward an environmentally sensitive and energy efficient future because the federal government failed to implement the Energy Policy Act.

2. This action seeks to compel the federal Defendants to comply with Energy Policy Act requirements that Congress designed to achieve cleaner air, strengthen energy security, and establish a nationwide alternative fuels infrastructure.

3. First, this action seeks to compel all Defendants, with the exception of the U.S. Department of Energy, to comply with the Energy Policy Act's requirement that if an agency buys vehicles covered by the Act, a certain percentage of those vehicles must be alternative fuel vehicles ("AFVs").

4. Second, this action seeks to compel all Defendants to comply with the Energy Policy Act's requirement that they place their annual AFV fleet percentage compliance reports on a publicly available website, the location of which must be provided to the public in the Federal Register.

5. Third, this action seeks to compel the Secretary of the U.S. Department of Energy to comply with the Energy Policy Act's requirement that the Department of Energy determine, according to specified procedures, deadlines, and standards, whether a private and municipal fleet requirement program is necessary to achieve the goals of the Energy Policy Act.

JURISDICTION

6. The Court has jurisdiction over this action to compel the performance of non-discretionary duties by the Defendants pursuant to 28 U.S.C. § 1331 (federal question) and 5 U.S.C. § 701-706 (Administrative Procedure Act). The relief requested is authorized by 28 U.S.C. § 2201-2202 (declaratory and injunctive relief).

7. Defendants have not remedied their violations of the Energy Policy Act. There exists an actual controversy between the parties within the meaning of 28 U.S.C. § 2201 (declaratory judgments).

VENUE AND INTRADISTRICT ASSIGNMENT

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because Plaintiffs maintain offices in the Northern District of California, many of Plaintiffs' members reside in the Northern District, and a substantial part of the events or omissions giving rise to the claims occur in the Northern District.

1 floods and drought. Additionally, Plaintiffs' members are already
2 and will continue to be adversely affected by the impacts of oil
3 exploration and development in sensitive wildlife areas due to the
4 increasing demand for petroleum oil.

5 16. The acts and omissions of Defendants alleged in this
6 complaint related to AFV procurement cause injury to Plaintiffs'
7 members and staff by contributing to global warming, prolonging air
8 quality conditions that adversely affect Plaintiffs' health,
9 welfare, and environment, compounding the need for petroleum oil
10 exploration and development in sensitive wildlife areas in the U.S.
11 and abroad, and nullifying measures mandated by the Energy Policy
12 Act to protect their health, welfare, and environment.

13 17. Furthermore, Plaintiffs' members and staff derive
14 scientific, recreational, health, conservation, spiritual, and
15 aesthetic benefits from the preservation and protection of
16 threatened and endangered species, which are adversely impacted by
17 vehicle emissions. The decline of many species, such as
18 California's mountain yellow-legged frog and other imperiled
19 amphibian species, are associated with air pollution. The health,
20 recreational, aesthetic, and environmental interests of the
21 Plaintiffs' staff and members have been and continue to be
22 adversely affected by the acts and omissions of Defendants alleged

7
1 in this complaint. Granting the requested relief would redress the
2 injuries described above.

3 18. The acts and omissions of all Defendants alleged herein
4 related to their refusal to publish AFV compliance reports on a
5 publicly accessible website and notify the public of their location
6 and availability through the Federal Register as required by the
7 Energy Policy Act deprive Plaintiffs' members and staff of
8 information guaranteed to the public by the Energy Policy Act.
9 Plaintiffs' members and staff are adversely affected by Defendants'
10 failure to publish this guaranteed information.

11 19. If Plaintiffs' staff and members had this information,
12 they would use it to educate the public about air pollution,
13 alternative fuels, and AFVs, and to advocate for the adoption of
14 measures by the government for attaining and maintaining compliance
15 with the Energy Policy Act's AFV purchasing requirements.
16 Defendants' failure to produce this information as required by the
17 Act deprives the Plaintiffs' staff and members of these benefits
18 and thus causes them injury. Granting the requested relief would
19 redress the injuries described above.

20 20. The acts and omissions of Defendant Department of Energy
21 alleged in this complaint deprive the Plaintiffs' members and staff
22 of procedural rights and protections to which they would otherwise
23 be entitled, including, but not limited to, the right to comment on

1 the overdue proposed rule to determine whether a private and
2 municipal fleet requirement is necessary to achieve the Energy
3 Policy Act's goals. The Department of Energy's failure to timely
4 determine whether a private and municipal fleet requirement is
5 necessary in order to achieve the goals of the Act has the same
6 effect as a decision that such a requirement is not necessary,
7 without providing Plaintiffs' and their members with the right they
8 would otherwise have to comment on the overdue proposed rule and
9 challenge the final rule in court. Plaintiffs' members and staff
10 have been, are being, and unless the relief requested is granted,
11 will continue to be adversely affected and injured by the above
12 violation.

13 21. Defendant SPENCER ABRAHAM is sued in his official
14 capacity as Secretary of the U.S. Department of Energy. Defendant
15 U.S. DEPARTMENT OF ENERGY is an agency of the government of the
16 United States and is legally charged with implementing the Energy
17 Policy Act and complying with its provisions, including the actions
18 sought herein. Hereinafter, Defendants Abraham and U.S. Department
19 of Energy are collectively referred to as "DOE."

20 22. Defendant DONALD L. EVANS is sued in his official
21 capacity as Secretary of the U.S. Department of Commerce.
22 Defendant U.S. DEPARTMENT OF COMMERCE is a federal executive
23 department of the United States government and is legally charged

1 with complying with the Energy Policy Act, including the actions
2 sought herein. Hereinafter, Defendants Evans and U.S. Department
3 of Commerce are collectively referred to as "Commerce."

4 23. Defendant DONALD H. RUMSFELD is sued in his official
5 capacity as Secretary of the U.S. Department of Defense. Defendant
6 U.S. DEPARTMENT OF DEFENSE is a federal executive department of the
7 United States government and is legally charged with complying with
8 the Energy Policy Act, including the actions sought herein.
9 Hereinafter, Defendants Rumsfeld and U.S. Department of Defense are
10 collectively referred to as "DOD."

11 24. Defendant GALE A. NORTON is sued in her official capacity
12 as Secretary of the U.S. Department of the Interior. Defendant
13 U.S. DEPARTMENT OF INTERIOR is a federal executive department of
14 the United States government and is legally charged with complying
15 with the Energy Policy Act, including the actions sought herein.
16 Hereinafter, Defendants Norton and U.S. Department of the Interior
17 are collectively referred to as "DOI."

18 25. Defendant JOHN ASHCROFT is sued in his official capacity
19 as Attorney General of the United States and head of the U.S.
20 Department of Justice. Defendant U.S. DEPARTMENT OF JUSTICE is a
21 federal executive department of the United States government and is
22 legally charged with complying with the Energy Policy Act,
23 including the actions sought herein. Hereinafter, Defendants

1 Ashcroft and U.S. Department of Justice are collectively referred
2 to as "DOJ."

3 26. Defendant STEPHEN A. PERRY is sued in his official
4 capacity as Administrator of the U.S. General Services
5 Administration. Defendant U.S. GENERAL SERVICES ADMINISTRATION is
6 an independent establishment of the U.S. government and is legally
7 charged with complying with the Energy Policy Act, including the
8 actions sought herein. Hereinafter, Defendants Perry and U.S.
9 General Services Administration are collectively referred to as
10 "GSA."

11 27. Defendant ANTHONY J. PRINCIPI is sued in his official
12 capacity as Secretary of the U.S. Department of Veterans Affairs.
13 Defendant U.S. DEPARTMENT OF VETERANS AFFAIRS is a federal
14 executive department of the United States government and is legally
15 charged with complying with the Energy Policy Act, including the
16 actions sought herein. Hereinafter, Defendants Principi and U.S.
17 Department of Veterans Affairs are collectively referred to as
18 "DVA."

19 28. Defendant NORMAN Y. MINETA is sued in his official
20 capacity as Secretary of the U.S. Department of Transportation.
21 Defendant U.S. DEPARTMENT OF TRANSPORTATION is a federal executive
22 department of the United States government and is legally charged
23 with complying with the Energy Policy Act, including the actions

1 sought herein. Hereinafter, Defendants Mineta and U.S. Department
2 of Transportation are collectively referred to as "DOT."

3 29. Defendant RICHARD A. MESERVE is sued in his official
4 capacity as Chairman of the U.S. Nuclear Regulatory Commission.
5 Defendant U.S. NUCLEAR REGULATORY COMMISSION is an independent
6 establishment of the U.S. government and is legally charged with
7 complying with the Energy Policy Act, including the actions sought
8 herein. Hereinafter, Defendants Meserve and U.S. Nuclear
9 Regulatory Commission are collectively referred to as "NRC."

10 30. Defendant CHRISTINE T. WHITMAN is sued in her official
11 capacity as Administrator of the U.S. Environmental Protection
12 Agency. Defendant U.S. ENVIRONMENTAL PROTECTION AGENCY is an
13 executive agency of the U.S. government and is legally charged with
14 complying with the Energy Policy Act, including the actions sought
15 herein. Hereinafter, Defendants Whitman and U.S. Environmental
16 Protection Agency are collectively referred to as "EPA."

17 31. Defendant ANN M. VENEMAN is sued in her official capacity
18 as Secretary of the U.S. Department of Agriculture. Defendant U.S.
19 DEPARTMENT OF AGRICULTURE is a federal executive department of the
20 United States government and is legally charged with complying with
21 the Energy Policy Act, including the actions sought herein.
22 Hereinafter, Defendants Veneman and U.S. Department of Agriculture
23 are collectively referred to as "USDA."

1 32. Defendant TOMMY G. THOMPSON is sued in his official
2 capacity as Secretary of the U.S. Department of Health & Human
3 Resources. Defendant U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES is
4 a federal executive department of the United States government and
5 is legally charged with complying with the Energy Policy Act,
6 including the actions sought herein. Hereinafter, Defendants
7 Thompson and U.S. Department of Health & Human Resources are
8 collectively referred to as "HHS."

9 33. Defendant MEL R. MARTINEZ is sued in his official
10 capacity as Secretary of the U.S. Department of Housing and Urban
11 Development. Defendant U.S. DEPARTMENT OF HOUSING AND URBAN
12 DEVELOPMENT is a federal executive department of the United States
13 government and is legally charged with complying with the Energy
14 Policy Act, including the actions sought herein. Hereinafter,
15 Defendants Martinez and U.S. Department of Housing and Urban
16 Development are collectively referred to as "HUD."

17 34. Defendant ELAINE L. CHAO is sued in her official capacity
18 as Secretary of the U.S. Department of Labor. Defendant U.S.
19 DEPARTMENT OF LABOR is a federal executive department of the United
20 States government and is legally charged with complying with the
21 Energy Policy Act, including the actions sought herein.
22 Hereinafter, Defendants Chao and U.S. Department of Labor are
23 collectively referred to as "DOL."

1 35. Defendant COLIN L. POWELL is sued in his official
2 capacity as Secretary of the U.S. Department of State. Defendant
3 U.S. DEPARTMENT OF STATE is a federal executive department of the
4 United States government and is legally charged with complying with
5 the Energy Policy Act, including the actions sought herein.
6 Hereinafter, Defendants Powell and U.S. Department of State are
7 collectively referred to as "State."

8 36. Defendant PAUL H. O'NEILL is sued in his official
9 capacity as Secretary of the U.S. Department of Treasury.
10 Defendant U.S. DEPARTMENT OF TREASURY is a federal executive
11 department of the United States government and is legally charged
12 with complying with the Energy Policy Act, including the actions
13 sought herein. Hereinafter, Defendants O'Neill and U.S. Department
14 of Treasury are collectively referred to as "Treasury."

15 37. Defendant DANIEL R. MULVILLE is sued in his official
16 capacity as Acting Administrator of the National Aeronautics and
17 Space Administration. Defendant NATIONAL AERONAUTICS AND SPACE
18 ADMINISTRATION is an independent establishment of the U.S.
19 government and is legally charged with complying with the Energy
20 Policy Act, including the actions sought herein. Hereinafter,
21 Defendants Mulville and National Aeronautics and Space
22 Administration are collectively referred to as "NASA."

38. Defendant JOHN E. POTTER is sued in his official capacity as Postmaster General and Chief Executive Officer of the U.S. Postal Service. Defendant U.S. POSTAL SERVICE is an independent establishment of the U.S. government and is legally charged with complying with the Energy Policy Act, including the actions sought herein. Hereinafter, Defendants Potter and U.S. Postal Service are collectively referred to as "USPS."

LEGAL FRAMEWORK

39. The Energy Policy Act of 1992, 42 U.S.C. §§ 13201 et seq., establishes a comprehensive scheme to achieve environmental, economic, and national security benefits by promoting the use of alternative fuels and reducing the transportation sector's consumption of petroleum fuel.

40. The Act confronts the direct link between the level and type of energy consumption and the quality of the environment. The Act also embodies Congress's effort to enact a national energy policy that gradually and steadily increases U.S. energy security in part by reducing our use of oil-based fuels in our motor vehicle sector. A barrel reduction in oil demand through substitution or efficiency is at least as valuable as an additional barrel of oil produced.

1 41. Congress intended the Energy Policy Act to displace
2 conventional petroleum fuel with non-petroleum energy sources,
3 focusing on light-duty motor vehicle fleet operations.

4 42. By initially focusing on federal fleets, Congress
5 intended for the federal government to pave the way for alternative
6 fuel use and fuel flexibility for society at large by demonstrating
7 the in-use practicability of the technology on a substantial scale
8 and to provide the necessary critical mass to catalyze markets into
9 supplying alternative fuels and vehicles with sufficient scale and
10 access.

11 43. In this way, the federal fleet AFV requirements would
12 plant the seeds for growth of AFV use.

13 44. Under the Act, DOE is required to develop and oversee a
14 program designed to replace 10 percent of our petroleum motor fuel
15 consumption by the year 2000 and 30 percent by the year 2010.

16 45. To achieve this purpose, the Act contains several
17 regulatory mandates directed at federal agencies. The three
18 requirements that follow are the focus of this litigation.

19 **I. Minimum Federal Fleet Percentage Requirements**

20 **A. The Fleet Requirement Program of the Energy Policy Act**

21 46. Energy Policy Act requires that at least 25 percent of
22 the total number of Energy Policy Act-covered vehicles acquired by
23 a federal fleet in fiscal year 1996 must be AFVs; at least 33

1 percent of the total number of covered vehicles acquired by a
2 federal fleet in fiscal year 1997 must be AFVs; at least 50 percent
3 of the total number of covered vehicles acquired by a federal fleet
4 in fiscal year 1998 must be AFVs; and at least 75 percent of the
5 total number of covered vehicles acquired by a federal fleet in
6 fiscal year 1999 and thereafter must be AFVs.

7 47. The Act defines a federal fleet as a group of 20 or more
8 light-duty motor vehicles located in a metropolitan area with a
9 1980 population of 250,000 or more persons, and owned, operated,
10 acquired, controlled by, or assigned to any Federal executive
11 department, military department, Government corporation,
12 independent establishment, or executive agency, the U.S. Postal
13 Service, the Congress, the courts of the U.S., or the Executive
14 office of the President.

15 48. These vehicles must be centrally fueled or capable of
16 being centrally fueled. DOE regulations define capable of being
17 centrally fueled as a vehicle that can be refueled at least 75
18 percent of its time at the location that is owned, operated, or
19 controlled by the fleet or is under contract for refueling
20 purposes.

21 49. The Energy Policy Act exempts law enforcement vehicles
22 from the Act's requirements.

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1 50. The Energy Policy Act exempts emergency motor vehicles
2 from the Act's requirements.

3 51. The Energy Policy Act exempts from coverage motor
4 vehicles acquired and used for military purposes that the Secretary
5 of Defense has certified to the Secretary of Energy must be exempt
6 for national security reasons.

7 52. The Energy Policy Act exempts from coverage motor
8 vehicles held for lease or rental to the general public.

9 53. The Energy Policy Act exempts from coverage motor
10 vehicles held for sale by motor vehicle dealers.

11 54. The Energy Policy Act exempts from coverage motor
12 vehicles used for motor vehicle manufacturer product evaluations or
13 tests.

14 55. The Energy Policy Act exempts nonroad vehicles, including
15 farm and construction vehicles.

16 56. The Energy Policy Act exempts from coverage motor
17 vehicles that under normal operations are garaged at personal
18 residences at night.

19 57. The Act defines "alternative fuel vehicle" as a dedicated
20 vehicle, meaning one that only operates on alternative fuel, or a
21 dual fueled vehicle, meaning a vehicle that can operate on
22 alternative fuel and gasoline or diesel.

1 58. The Act defines "alternative fuel" as: methanol;
2 denatured ethanol; and other alcohols; mixtures containing 85
3 percent or more methanol, denatured ethanol, and other alcohols
4 with gasoline or other fuels; natural gas; liquefied petroleum gas;
5 hydrogen; coal-derived liquid fuels; fuels derived from biological
6 materials; electricity; and any other fuel the Secretary determines
7 by rule is substantially not petroleum and would yield substantial
8 energy security benefits and substantial environmental benefits.

9 59. In the alternative to fulfilling the Energy Policy Act's
10 AFV acquisition requirements by purchasing AFVs, the Act provides
11 that an agency may receive one AFV credit for every 450 gallons of
12 biodiesel fuel in fuel containing at least 20 percent biodiesel by
13 volume used in vehicles that weigh more than 8,500 pounds gross
14 vehicle weight rating. Credits allocated under this section can be
15 used to satisfy up to 50 percent of an agency's AFV requirements.

16 B. The Fleet Requirement Program In Executive Order 13149

17 60. On April 21, 2000, President Clinton issued an Executive
18 Order to "ensure that the Federal Government exercises leadership
19 in the reduction of petroleum consumption through improvements in
20 fleet fuel efficiency and the use of alternative fuel vehicles
21 (AFVs) and alternative fuels." Exec. Order No. 13149, Greening the
22 Government Through Federal Fleet and Transportation Efficiency, 65
23 Fed. Reg. 24607 (Apr. 21, 2000).

1 61. Executive Order 13149 directs each agency operating 20 or
2 more vehicles in the U.S. to reduce its entire fleet's annual
3 petroleum consumption by at least 20 percent by the end of FY 2005
4 as compared with FY 1999 levels.

5 62. Executive Order 13149 directs each agency to fulfill the
6 Energy Policy Act's acquisition requirements for AFVs and to use
7 alternative fuels to meet a majority of the fuel requirements for
8 those motor vehicles by the end of FY 2005.

9 63. Executive Order 13149 requires each agency to increase
10 the average Environmental Protection Agency fuel economy rating of
11 passenger cars and light trucks acquired by at least 1 mile per
12 gallon by the end of FY 2002 and at least 3 miles per gallon by the
13 end of FY 2005 as compared to FY 1999 acquisitions.

14 64. Section 401 of Executive Order 13149 makes it easier for
15 agencies to fulfill their Energy Policy Act AFV requirements by
16 providing vehicle reporting credits for the following: each agency
17 acquisition of an alternative fuel light-duty vehicle, regardless
18 of geographic placement; one additional credit for each light-duty
19 AFV that exclusively uses an alternative fuel; one additional
20 credit for each Zero Emission Vehicle of any size; three credits
21 for dedicated medium-duty AFVs; four credits for dedicated heavy-
22 duty AFVs; and one credit for every 450 gallons of pure bio-diesel
23 used in diesel vehicles.

1 II. Reporting Requirements

2 65. The Energy Policy Act requires the head of each Federal
3 agency subject to the Act to prepare and submit annual reports to
4 Congress summarizing the agency's compliance with the Act's
5 alternative fuel purchasing requirements for federal fleets. This
6 summary must include a plan of compliance containing specific dates
7 when the agency will achieve compliance.

8 66. The agency must place the reports on a publicly available
9 website and notify the public of the reports' existence and
10 location through publication of this information in the Federal
11 Register.

12 III. Private And Municipal Fleet Requirement Program

13 67. The Energy Policy Act requires DOE to undertake a staged
14 rulemaking process to determine whether or not AFV requirements
15 must also be applied to private and local government fleets.

16 68. DOE is authorized to promulgate a rule under one of two
17 distinct rulemaking schedules to determine whether a private and
18 municipal fleet requirement is necessary.

19 69. Under the "early rulemaking" provisions, DOE must publish
20 an advance notice of proposed rulemaking to evaluate the federal
21 government's progress toward achieving the replacement fuel goals
22 of the Act and assess the achievability and adequacy of those
23 goals.

1 70. Subsequently, DOE must publish in the Federal Register a
2 proposed rule implementing a private and municipal fleet
3 requirement and provide a public comment period with hearings on
4 the proposal. DOE is then authorized to promulgate a final rule.

5 71. However, any rule DOE promulgates under this early
6 rulemaking section must be completed by December 15, 1996 to be
7 enforceable. If DOE misses this deadline or determines under this
8 section that a fleet requirement program is not necessary at the
9 time, the agency must proceed with later rulemaking.

10 72. The section of the Act concerning later rulemaking
11 provides that by April 1, 1998, the Secretary must publish an
12 advance notice of proposed rulemaking to evaluate the progress made
13 toward reaching the goals set out in section 13252(b)(2) of the Act
14 of reducing 10 percent of our petroleum motor fuel consumption by
15 the year 2000 and 30 percent by the year 2010. DOE must provide
16 for at least three regional hearings and a public comment period on
17 this advance notice.

18 73. The Act requires DOE to publish a proposed rule for a
19 fleet requirement program by May 1, 1999, with hearings and public
20 comment to follow.

21 74. By January 1, 2000, DOE must determine whether a fleet
22 requirement program applicable to private and municipal fleets is
23 necessary.

1 75. A private and municipal fleet program "shall be
2 considered necessary" if DOE determines the following: (1) the goal
3 of 30 percent replacement fuel by 2010 (or other goal if modified
4 under the proper modification procedures) is not expected to be
5 achieved without a private and municipal fleet requirement program;
6 and (2) the 30 percent goal (or goal as modified) is practicable
7 and achievable with a private and municipal fleet requirement
8 program in combination with voluntary means and other programs.

9 76. The determination that a private and municipal fleet
10 requirement is necessary can serve to modify the goal of 30 percent
11 reduction in motor fuel consumption by 2010, and establish a
12 revised goal, if DOE determines through the proper rulemaking
13 procedures that the goal in place is inadequate, impracticable, or
14 not expected to be achievable.

15 77. DOE also may modify the private and municipal fleet
16 requirement percentages for a given year, but at least 10 percent
17 of the vehicles acquired must be AFVs.

18 78. If DOE determines that a private and municipal fleet
19 requirement program is not necessary, DOE must by January 1, 2000
20 publish this determination in the Federal Register as a final
21 agency action, including an explanation of DOE's findings and basis
22 for the determination.

79. If DOE determines that a private and municipal fleet requirement program is necessary, then DOE must by January 1, 2000 require by rule that certain percentages of the total number of new light duty motor vehicles acquired for a fleet, (other than Federal, State, or covered alternative fuel provider) must be AFVs beginning in model year 2002.

80. Model year 2002 began on September 1, 2001.

81. Under the Act, the following phased-in percentages of AFVs apply to private and municipal fleet vehicle acquisitions: 20 percent of the light duty motor vehicles acquired in model year 2002 must be AFVs; 40 percent in model year 2003 must be AFVs; 60 percent in model year 2004 must be AFVs; and 70 percent in model year 2005 and thereafter must be AFVs.

82. If accomplished by proper rulemaking, the Secretary can establish lower percentages of AFV purchasing requirements (not less than 10 percent) or later years for initiating the program.

83. The statute permits the Secretary to extend the January 1, 2000 deadline for determining whether a private and municipal fleet requirement is necessary for a maximum of 90 days.

FACTUAL BACKGROUND

I. Motor Vehicle Emissions Harm Public Health and The Environment

A. The U.S. Consumes a Significant Amount of Oil for Transportation, and Significant Air Pollution Results

1 84. In 2000, the U.S. was responsible for 25 percent of the
2 world total oil consumption. In 2000, the U.S. imported
3 approximately 58 percent of its total oil demand.

4 85. According to DOE, the gap between the transportation
5 sector's demand for petroleum and U.S. petroleum production
6 continues to widen. In the transportation sector alone, U.S.
7 consumption of petroleum surpasses total U.S. domestic petroleum
8 production by 5.9 million barrels. This gap is estimated to
9 increase to 12.8 million barrels per day by the year 2020.

10 86. The transportation sector is projected to use 17.8
11 million barrels of petroleum per day by 2020. Light-duty motor
12 vehicles will use approximately ten million of these barrels.

13 87. Each year in the U.S., approximately 65 percent of the
14 oil consumed is used for transportation. As a result, vehicle
15 emissions have become the leading source of U.S. air pollution.

16 88. Transportation related activities are responsible for an
17 estimated quarter of the greenhouse gases produced in this country,
18 with the U.S. contributing approximately 20 percent of these gases
19 globally.

20 **B. Poor Air Quality From Vehicle Emissions Adversely Affects**
21 **Humans And The Environment**

22 89. The U.S. Public Health Service has determined that high
23 levels of air pollution can cause and aggravate lung illnesses,

1 including acute respiratory infections, asthma, chronic bronchitis,
2 emphysema, and lung cancer.

3 90. Vehicles running on petroleum emit several "criteria"
4 pollutants regulated by the U.S. EPA under the Clean Air Act,
5 including ozone, carbon monoxide (CO), nitrogen oxides (NOx),
6 sulfur oxides (SOx), and particulate matter (PM).

7 91. Emitted NOx and volatile organic compounds ("VOCs"), form
8 low-level ozone (O₃) in the presence of sunlight and high
9 temperatures.

10 92. Low-level ozone is a major component of smog, which is
11 the most serious and persistent outdoor air quality problem in the
12 San Francisco Bay Area and in other parts of the country.

13 93. In the past five years, the San Francisco Bay Area has
14 violated the National Ambient Air Quality Standard ("NAAQS") for
15 ozone twenty-nine times. As a result, EPA has reclassified the Bay
16 Area as a non-attainment area for the federal one-hour ozone
17 standard.

18 94. Even at very low levels, ground-level ozone triggers a
19 variety of health problems including aggravated asthma, reduced
20 lung capacity, and increased susceptibility to respiratory
21 illnesses like pneumonia and bronchitis.

22 95. People with respiratory problems and children are most
23 vulnerable to ozone. However, when present in high levels, ozone

1 also can affect healthy adults, especially those active outdoors.
2 Repeated exposure to ozone pollution for several months may cause
3 permanent lung damage.

4 96. Ground-level ozone interferes with the ability of plants
5 to produce and store food, which makes them more susceptible to
6 disease, insects, other pollutants, and harsh weather. Ozone
7 damages the leaves of trees and other plants, ruining the
8 appearance of cities, national parks, and recreation areas. Ozone
9 reduces crop and forest yields and increases plant vulnerability to
10 disease, pests, and harsh weather.

11 97. Motor vehicle exhaust is responsible for about 56 percent
12 of all Carbon Monoxide (CO) emissions nationwide.

13 98. Higher levels of CO generally occur in areas with heavy
14 traffic congestion. In cities, 85 to 95 percent of all CO
15 emissions may come from motor vehicle exhaust.

16 99. At high levels in the air, CO is poisonous even to
17 healthy people. CO can affect the heart and central nervous
18 system. For a person with heart disease, a single exposure to CO
19 at low levels may cause chest pain and reduce that person's ability
20 to exercise; repeated exposure may contribute to other
21 cardiovascular effects.

22 100. People who breathe high levels of CO can develop vision
23 problems, reduced ability to work or learn, reduced manual

1 dexterity, and difficulty performing complex tasks. At extremely
2 high levels, CO is poisonous and can cause death.

3 101. Nitrogen oxide (Nox) is the term used to describe a group
4 of highly reactive gases, all of which contain nitrogen and oxygen
5 in varying amounts. NOx forms from fuels burned at high
6 temperatures. Motor vehicles are a primary source of NOx.

7 102. NOx is one of the main components involved in the
8 formation of ground-level ozone. NOx also reacts to form nitrate
9 particles, acid aerosols, as well as NO₂, which also cause
10 respiratory problems. NOx contributes to the formation of acid
11 rain, nutrient overload that deteriorates water quality, and
12 visibility impairment. Lost visibility is now noted in many
13 National Parks. Furthermore, NOx reacts to form toxic chemicals
14 and contributes to global warming.

15 103. Sulfur dioxide, or SO₂, is a member of the family of
16 sulfur oxide (Sox) gases. These gases are formed when gasoline is
17 extracted from oil and when fuel that contains sulfur, including
18 oil, is burned.

19 104. According to EPA, SO₂ dissolves in water vapor to form
20 acid and interacts with other gases and particles in the air to
21 form sulfates and other products that can harm human health and the
22 environment.

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1 105. SO₂ contributes to respiratory illness and exacerbates
2 heart and lung diseases. SO₂ contributes to acid rain, which
3 damages trees, crops, historic buildings, and monuments. SO₂ makes
4 soils, lakes, and streams acidic. SO₂ also contributes to the
5 formation of atmospheric particles that cause visibility
6 impairment.

7 106. Particulate Matter (PM) is the term used to describe
8 particles found in the air, including dust and smoke. PM can be
9 directly emitted into the air from a variety of sources including
10 cars, trucks, and buses.

11 107. PM is associated with serious health effects, including
12 aggravated asthma, increases in respiratory symptoms like coughing
13 and difficult or painful breathing, chronic bronchitis, decreased
14 lung function, and premature death.

15 108. According to EPA, PM is the major source of haze that is
16 responsible for reducing visibility in many areas of the U.S.,
17 including our national parks. PM settles on soil and water and
18 changes their nutrient and chemical balance. PM makes lakes and
19 streams acidic, changes the nutrient balance in coastal waters and
20 large river basins, depletes the nutrients in soil, damages
21 sensitive forests and farm crops, and affects the diversity of
22 ecosystems. PM erodes and stains structures including monuments
23 and statues.

1 109. Motor vehicles also emit several hazardous pollutants
2 that EPA classifies as known or probable human carcinogens. EPA
3 estimates that mobile sources of air toxics, such as cars, trucks,
4 and buses, account for as much as half of all cancers attributed to
5 outdoor sources of air toxics.

6 110. The gasoline additive benzene, for instance, is a known
7 human carcinogen. Benzene causes leukemia and blood disorders in
8 adults. Short-term exposure to benzene can cause dizziness,
9 headaches, vomiting, unconsciousness, and, at high levels, death.

10 111. Studies also indicate an association between high traffic
11 streets and childhood cancer, including leukemia. An estimated
12 80% of benzene emissions in the U.S. originate from motor vehicles.

13 112. Children, the elderly, athletes, and people with
14 compromised immune systems suffer the worst health problems
15 associated with poor air quality. Among these individuals, poor
16 air quality causes heightened health impacts, such as difficulty
17 breathing, lowered disease-resistance, and hindered development of
18 lung capacity in children.

19 113. Air pollution is a problem that affects millions of
20 Americans. In California, for example, over ninety percent of the
21 population lives in regions adversely affected by air quality
22 problems, largely as a result of vehicle exhaust.

1 114. Long-term exposure to air pollution in the four San
2 Francisco Bay Area counties may cause an additional 208 cases of
3 cancer for every million residents, which is 208 times greater than
4 the acceptable risk of cancer caused by air pollution as
5 established by the Clean Air Act of 1990. Most of the cancer risk
6 is attributable to benzene, discussed above, and butadiene, a
7 byproduct of fuel combustion.

8 **II. Alternative Fuel Vehicles Are Better For Energy Security,
Public Health, and The Environment**
9

10 115. Displacing petroleum with alternative transportation
11 fuels reduces our dependence on imported petroleum, reduces U.S.
12 vulnerability to oil price shocks, decreases emissions of
13 greenhouse gases, criteria and toxic pollutants, and promotes
14 domestic economic development.

15 116. Substitution of petroleum-based transportation fuels
16 (gasoline and diesel) by non-petroleum-based fuels ("replacement
17 fuels," including alternative fuels such as electricity, ethanol,
18 hydrogen, liquefied petroleum gas, methanol, and natural gas) could
19 be a key means of reducing the vulnerability of the U.S.
20 transportation sector to disruptions of the petroleum supply.

21 117. The vehicles using alternative fuels work well and have
22 operating characteristics that are acceptable to a significant
23 portion of the vehicle-owning population.

1 118. Alternative fuels that have lower carbon fuel-cycles
2 than gasoline or diesel fuel also have the added benefit of
3 reducing greenhouse gas emissions.

4 119. Alternative fuels are inherently cleaner than gasoline
5 because they are chemically less complex and burn cleaner.

6 120. When used with advanced engine and emission control
7 technologies, alternative fuels burn more efficiently and thus
8 release fewer emissions from incomplete combustion. In addition,
9 because alternative fuels evaporate less readily than gasoline,
10 there are fewer evaporative emissions from the vehicle's tank,
11 limiting smog-forming emissions.

12 121. Electric vehicles, which have no internal combustion
13 engine, potentially offer the greatest emission reductions. Their
14 primary source of air pollution comes from the power plants that
15 create electricity to charge batteries. Yet even after these
16 emissions are considered, electric vehicles typically have 90
17 percent fewer emissions than an internal combustion engine.

18 **FACTS GIVING RISE TO PLAINTIFFS' CAUSES OF ACTION**

19 **I. Defendants Are In Violation Of The Act's AFV Purchasing**
20 **Requirements**

21 122. Defendant Commerce is in violation of the Energy Policy
22 Act's AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D).
23 In its response to Plaintiffs' August 10, 2001 Freedom of

1 Information Act (FOIA) request, Commerce provided no 1996
2 compliance data. On information and belief, Commerce is in
3 violation of the requirement that of the covered vehicles Commerce
4 acquired in 1996, 25 percent must be AFVs. In its response to
5 Plaintiffs' FOIA request, Commerce stated that in 1998, only 11
6 percent of the covered vehicles it acquired were AFVs rather than
7 the 50 percent required by law. In 1998, Commerce was
8 approximately 127 AFVs short of the Energy Policy Act requirement.
9 In its response to Plaintiffs' FOIA request, Commerce stated that
10 only 16 percent of the covered vehicles Commerce acquired in 1999
11 were AFVs rather than the 75 percent required by law. In 1999,
12 Commerce was approximately 227 AFVs short of the Act's requirement.
13 In its response to Plaintiffs' FOIA request, Commerce stated that
14 only 17 percent of the covered vehicles it acquired in 2000 were
15 AFVs rather than the 75 percent required by law. In 2000, Commerce
16 was approximately 76 AFVs short of the Act's requirement. In its
17 response to Plaintiffs' FOIA request, Commerce stated it only plans
18 to purchase 19 percent AFVs in 2001 and 35 percent in 2002, rather
19 than the 75 percent required for both years by the Energy Policy
20 Act.

21 123. Defendant DOD is in violation of the Energy Policy Act's
22 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). DOD
23 has not responded to Plaintiffs' FOIA request of August 10, 2001.

1 According to DOE information produced in response to Plaintiffs'
2 August 7, 2001 FOIA request to DOE, DOD stated that only 21 percent
3 of the covered vehicles DOD acquired in 1996 were AFVs rather than
4 the 25 percent required by law. In 1996, DOD was approximately 279
5 AFVs short of the Act's requirement. According to DOE information
6 produced in response to Plaintiffs' August 7, 2001 FOIA request to
7 DOE, DOD stated that only 24 percent of the covered vehicles DOD
8 acquired in 1997 were AFVs rather than the 33 percent required by
9 law. In 1997, DOD was approximately 722 AFVs short of the Act's
10 requirement. According to DOE information produced in response to
11 Plaintiffs' August 7, 2001 FOIA request to DOE, DOD stated that
12 only 33 percent of the covered vehicles DOD acquired in 1998 were
13 AFVs rather than the 50 percent required by law. In 1998, DOD was
14 approximately 1,184 AFVs short of the Act's requirement. According
15 to DOE information produced in response to Plaintiffs' August 7,
16 2001 FOIA request to DOE, DOD stated that only 36 percent of the
17 covered vehicles DOD acquired in 1999 were AFVs rather than the 75
18 percent required by law. In 1999, DOD was approximately 3,056 AFVs
19 short of the Act's requirement. According to DOE information
20 produced in response to Plaintiffs' August 7, 2001 FOIA request to
21 DOE, DOD stated that only 47 percent of the covered vehicles DOD
22 acquired in 2000 were AFVs rather than the 75 percent required by
23
24
25

1 law. In 2000, DOD was approximately 2,233 AFVs short of the Act's
2 requirement.

3 124. Defendant DOI is in violation of the Energy Policy Act's
4 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). In
5 its response to Plaintiffs' August 10, 2001 FOIA request, DOI
6 provided no 1996 compliance data. On information and belief, DOI
7 is in violation of the Act's requirement that 25 percent of the
8 covered vehicles DOI acquired in 1996 must be AFVs. In its
9 response to Plaintiffs' FOIA request, DOI stated that of the
10 covered vehicles DOI acquired in 1997, only 22 percent were AFVs
11 rather than the 33 percent required by law. In 1997, DOI was
12 approximately 7 AFVs short of the Act's requirement. In its
13 response to Plaintiffs' FOIA request, DOI stated that of the
14 vehicles it acquired in 2000, only 31 percent were AFVs rather than
15 the 75 percent required by the Act. In 2000, DOI was approximately
16 335 AFVs short of the Act's requirement.

17 125. Defendant DOJ is in violation of the Energy Policy Act's
18 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). In
19 its response to Plaintiffs' August 7, 2001 FOIA request, DOJ
20 claimed a 100 percent exemption from compliance in 1996.
21 Plaintiffs contend that a 100 percent exemption was not warranted
22 in 1996. On information and belief, DOJ is in violation of the
23 Act's requirement that 25 percent of the covered vehicles DOJ

1 acquired in 1996 must be AFVs. In its response to Plaintiffs' FOIA
2 request, DOJ claimed a 100 percent exemption from compliance in
3 1997. Plaintiffs contend that a 100 percent exemption was not
4 warranted in 1997. On information and belief, DOJ is in violation
5 of the Act's requirement that 33 percent of the covered vehicles
6 DOJ acquired in 1997 must be AFVs. According to DOE information
7 produced in response to Plaintiffs' August 7, 2001 FOIA request to
8 DOE, DOJ stated that only 42 percent of the covered vehicles DOJ
9 acquired in 1998 were AFVs rather than the 50 percent required by
10 law. According to DOE information produced in response to
11 Plaintiffs' August 7, 2001 FOIA request to DOE, DOJ stated that
12 4,791 out of the 4,828 covered vehicles DOJ purchased in 1998 were
13 exempt for law enforcement. Plaintiffs contend that a 99.2
14 percent exemption was not warranted in 1998. On information and
15 belief, DOJ is in violation of the Act's requirement that of the
16 covered vehicles DOJ acquired in 1998, 50 percent must be AFVs. In
17 its response to Plaintiffs' FOIA request, DOJ provided insufficient
18 data to determine whether DOJ complied with the Act's requirement
19 that of the covered vehicles DOJ acquired in 1999, at least 75
20 percent must be AFVs. In its response to Plaintiffs' FOIA request,
21 DOJ stated that 4,233 out of the 4,237 covered vehicles DOJ
22 purchased in 1999 were exempt for law enforcement. Plaintiffs
23 contend that a 99.9 percent exemption was not warranted in 1998.

1 On information and belief, DOJ is in violation of the Act's
2 requirement that of the covered vehicles DOJ acquired in 1999, at
3 least 75 percent must be AFVs. In its response to Plaintiffs' FOIA
4 request, DOJ stated that of the covered vehicles it acquired in
5 2000, only 28 percent were AFVs rather than the 75 percent required
6 by law. In 2000, DOJ was approximately 54 AFVs short of the Act's
7 requirements.

8 126. Defendant GSA is in violation of the Energy Policy Act's
9 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). In
10 its response to Plaintiffs' August 10, 2001 FOIA request, GSA
11 stated that of the covered vehicles GSA acquired in 1996, only 23
12 percent were AFVs rather than the 25 percent required by law. In
13 1996, GSA was approximately 4 AFVs short of the Act's requirement.
14 In its response to Plaintiffs' FOIA request, GSA did not provide
15 any 1997 or 1998 compliance data. On information and belief, GSA
16 did not comply with the Act's requirement that 33 percent of the
17 covered vehicles GSA acquired in 1997 must be AFVs. On information
18 and belief, GSA did not comply with the Act's requirement that 50
19 percent of the covered vehicles GSA acquired in 1998 must be AFVs.
20 In its response to Plaintiffs' FOIA request, GSA stated that only
21 71 percent of the vehicles GSA acquired in 2000 were AFVs rather
22 than the 75 percent required by law. In 2000, GSA was
23 approximately 7 AFVs short of the Act's requirements.

1 127. Defendant DVA is in violation of the Energy Policy Act's
2 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). In
3 its response to Plaintiffs' August 10, 2001 FOIA request, DVA did
4 not provide any 1996 compliance data. On information and belief,
5 DVA is in violation of the Act's requirement that 25 percent of the
6 covered vehicles DVA acquired in 1996 must be AFVs. In its
7 response to Plaintiffs' FOIA request, DVA did not provide any 1997
8 compliance data. On information and belief, DVA is in violation of
9 the Act's requirement that 33 percent of the covered vehicles DVA
10 acquired in 1997 must be AFVs. In its response to Plaintiffs' FOIA
11 request, DVA did not provide any 1998 compliance data. On
12 information and belief, DVA is in violation of the Act's
13 requirement that 50 percent of the covered vehicles DVA acquired in
14 1998 must be AFVs. In its response to Plaintiffs' FOIA request,
15 DVA did not provide any 1999 compliance data. On information and
16 belief, DVA is in violation of the Act's requirement that 75
17 percent of the covered vehicles DVA acquired in 1999 must be AFVs.
18 In its response to Plaintiffs' FOIA request, DVA stated that only
19 22 percent of the covered vehicles DVA acquired in 2000 were AFVs
20 rather than the 75 percent required by law. In 2000, DVA was
21 approximately 662 AFVs short of the Act's requirement. In its
22 response to Plaintiffs' FOIA request, DVA stated that it only
23 planned to purchase 11 percent AFVs in 2001 rather than the 75

1 percent required by law. In its response to Plaintiffs' FOIA
2 request, DVA stated that it only planned to purchase 16 percent
3 AFVs in 2002 rather than the 75 percent required by law.

4 128. Defendant DOT is in violation of the Energy Policy Act's
5 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). In
6 its response to Plaintiffs' August 7, 2001 FOIA request, DOT stated
7 that only 23.2 percent of the covered vehicles DOT acquired in 1996
8 were AFVs rather than the 25 percent required by law. In 1996, DOT
9 was approximately 11 AFVs short of the Act's requirements. In its
10 response to Plaintiffs' FOIA request, DOT stated that only 24.1
11 percent of the covered vehicles DOT acquired in 1997 were AFVs
12 rather than the 33 percent required by law. In 1997, DOT was
13 approximately 56 AFVs short of the Act's requirements. In its
14 response to Plaintiffs' FOIA request, DOT stated that only 40
15 percent of the covered vehicles DOT acquired in 1998 were AFVs
16 rather than the 50 percent required by law. In 1998, DOT was
17 approximately 65 AFVs short of the Act's requirement. In its
18 response to Plaintiffs' FOIA request, DOT stated that only 53
19 percent of the covered vehicles DOT acquired in 1999 were AFVs
20 rather than the 75 percent required by law. In 1999, DOT was
21 approximately 133 AFVs short of the Act's requirement. In its
22 response to Plaintiffs' FOIA request, DOT stated that only 54
23 percent of the covered vehicles DOT acquired in 2000 were AFVs

1 rather than the 75 percent required by law. In 2000, DOT was
2 approximately 386 AFVs short of the Act's requirements.

3 129. Defendant NRC is in violation of the Energy Policy Act's
4 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). In
5 its response to Plaintiffs' August 7, 2001 FOIA request, NRC stated
6 that only 15 percent of the covered vehicles NRC acquired in 1996
7 were AFVs rather than the 25 percent required by law. In 1996, NRC
8 was approximately 2 AFVs short of the Act's requirement. In its
9 response to Plaintiffs' FOIA request, NRC admits that zero percent
10 of the vehicles NRC acquired in 1999 were AFVs rather than the 75
11 percent required by law. In its response to Plaintiffs' FOIA
12 request, NRC admits that of the covered vehicles NRC acquired in
13 2000, zero percent were AFVs rather than the 75 percent required by
14 law.

15 130. Defendant EPA is in violation of the Energy Policy Act's
16 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). EPA
17 has not responded to Plaintiffs' FOIA request of August 10, 2001.
18 On information and belief, EPA did not comply with the Act's
19 requirement that 25 percent of the covered vehicles EPA acquired in
20 1996 must be AFVs. According to DOE information produced in
21 response to Plaintiffs' August 7, 2001 FOIA request to DOE, EPA
22 stated that only 14 percent of the covered vehicles EPA acquired in
23 1997 were AFVs rather than the 33 percent required by law. In

1 1997, EPA was approximately 35 AFVs short of the Act's requirement.
2 According to DOE information produced in response to Plaintiffs'
3 August 7, 2001 FOIA request to DOE, EPA stated that only 35 percent
4 of the covered vehicles EPA acquired in 1998 were AFVs rather than
5 the 50 percent required by law. In 1998, EPA was approximately 22
6 AFVs short of the Act's requirement. EPA has not responded to
7 Plaintiffs' FOIA request of August 10, 2001. In response to
8 Plaintiffs' August 7, 2001 FOIA request to DOE, DOE had no 1999
9 compliance data for EPA. On information and belief, EPA did not
10 comply with the Act's requirement that 75 percent of the covered
11 vehicles EPA acquired in 1999 must be AFVs.

12 131. Defendant USDA is in violation of the Energy Policy Act's
13 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). USDA
14 has not responded Plaintiffs' August 10, 2001 FOIA request. On
15 information and belief, USDA did not comply with the Act's
16 requirement that 25 percent of the covered vehicles USDA acquired
17 in 1996 must be AFVs. On information and belief, USDA did not
18 comply with the Act's requirement that 33 percent of the covered
19 vehicles USDA acquired in 1997 must be AFVs. On information and
20 belief, USDA did not comply with the Act's requirement that 50
21 percent of the covered vehicles USDA acquired in 1998 must be AFVs.
22 On information and belief, USDA did not comply with the Act's

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1 requirement that 75 percent of the covered vehicles USDA acquired
2 in 1999 must be AFVs.

3 132. Defendant HHS is in violation of the Energy Policy Act's
4 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). In
5 its response to Plaintiffs' August 10, 2001 FOIA request, HHS did
6 not provide any 1996 compliance data. On information and belief,
7 HHS did not comply with the Act's requirement that 25 percent of
8 the covered vehicles HHS acquired in 1996 must be AFVs. In its
9 response to Plaintiffs' FOIA request, HHS did not provide any 1997
10 compliance data. On information and belief, HHS did not comply
11 with the Act's requirement that 33 percent of the covered vehicles
12 HHS acquired in 1997 must be AFVs. In its response to Plaintiffs'
13 FOIA request, HHS did not provide any 1998 compliance data. On
14 information and belief, HHS did not comply with the Act's
15 requirement that 50 percent of the covered vehicles HHS acquired in
16 1998 must be AFVs. In its response to Plaintiffs' FOIA request,
17 HHS did not provide any 1999 compliance data. On information and
18 belief, HHS did not comply with the Act's requirement that 75
19 percent of the covered vehicles HHS acquired in 1999 must be AFVs.
20 In its response to Plaintiffs' FOIA request, HHS did not provide
21 any 2000 compliance data. On information and belief, HHS did not
22 comply with the Act's requirement that 75 percent of the covered
23 vehicles HHS acquired in 2000 must be AFVs.

1 133. Defendant HUD is in violation of the Energy Policy Act's
2 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). HUD
3 has not responded to Plaintiffs' August 10, 2001 FOIA request. On
4 information and belief, HUD did not comply with the Act's
5 requirement that 25 percent of the covered vehicles HUD acquired in
6 1996 must be AFVs. According to DOE information produced in
7 response to Plaintiffs' August 7, 2001 FOIA request to DOE, HUD
8 stated that zero percent of the covered vehicles HUD acquired in
9 1997 were AFVs rather than the 33 percent required by law.
10 According to DOE information produced in response to Plaintiffs'
11 August 7, 2001 FOIA request to DOE, HUD stated that zero percent
12 of the covered vehicles HUD acquired in 1998 were AFVs rather than
13 the 50 percent required by law. In 1998, HUD was approximately 1
14 AFV short of the Act's requirements. HUD has not responded to
15 Plaintiffs' FOIA request of August 10, 2001. In response to
16 Plaintiffs' August 7, 2001 FOIA request to DOE, DOE had no 1999 or
17 2000 compliance data for HUD. On information and belief, HUD did
18 not comply with the Act's requirement that 75 percent of the
19 covered vehicles HUD acquired in 1999 and 2000 must be AFVs.

20 134. Defendant DOL is in violation of the Energy Policy Act's
21 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). In
22 its response to Plaintiffs' August 10, 2001 FOIA request, DOL did
23 not provide any 1996 compliance data. On information and belief,
24

1 DOL is in violation of the Act's requirement that 25 percent of the
2 covered vehicles DOL acquired in 1996 must be AFVs. In its
3 response to Plaintiffs' FOIA request, DOL provided insufficient
4 information to determine whether DOL complied with the Act's
5 requirement that 75 percent of the covered vehicles DOL acquired in
6 1999 must be AFVs. On information and belief, DOL failed to comply
7 with the Act's requirement that 75 percent of the covered vehicles
8 DOL acquired in 1999 must be AFVs. In its response to Plaintiffs'
9 FOIA request, DOL provided insufficient information to determine
10 whether DOL complied with the Act's requirement that 75 percent of
11 the covered vehicles DOL acquired in 2000 must be AFVs. On
12 information and belief, DOL failed to comply with the Act's
13 requirement that 75 percent of the covered vehicles DOL acquired in
14 2000 must be AFVs.

15 135. Defendant State is in violation of the Energy Policy
16 Act's AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D).
17 State has not responded to Plaintiffs' August 14, 2001 FOIA
18 request. On information and belief, State is in violation of the
19 Act's requirement that 25 percent of the covered vehicles State
20 acquired in 1996 must be AFVs. On information and belief, State is
21 in violation of the Act's requirement that 33 percent of the
22 covered vehicles State acquired in 1997 must be AFVs. On
23 information and belief, State is in violation of the Act's

1 requirement that 50 percent of the covered vehicles State acquired
2 in 1998 must be AFVs. On information and belief, State is in
3 violation of the Act's requirement that 75 percent of the covered
4 vehicles State acquired in 1999 must be AFVs.

5 136. Defendant Treasury is in violation of the Energy Policy
6 Act's AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D).
7 Treasury has not responded to Plaintiffs' August 10, 2001 FOIA
8 request. On information and belief, Treasury is in violation of
9 the Act's requirement that 25 percent of the covered vehicles
10 Treasury acquired in 1996 must be AFVs. On information and belief,
11 Treasury is in violation of the Act's requirement that 33 percent
12 of the covered vehicles Treasury acquired in 1997 must be AFVs. On
13 information and belief, Treasury is in violation of the Act's
14 requirement that 50 percent of the covered vehicles Treasury
15 acquired in 1998 must be AFVs. On information and belief, Treasury
16 is in violation of the Act's requirement that 75 percent of the
17 covered vehicles Treasury acquired in 1999 must be AFVs. On
18 information and belief, Treasury is in violation of the Act's
19 requirement that 75 percent of the covered vehicles Treasury
20 acquired in 2000 must be AFVs.

21 137. Defendant NASA is in violation of the Energy Policy Act's
22 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). In
23 its response to Plaintiffs' August 10, 2001 FOIA request, NASA did

1 not provide any 1996 compliance data. On information and belief,
2 NASA is in violation of the Act's requirement that 25 percent of
3 the covered vehicles NASA acquired in 1996 must be AFVs. In its
4 response to Plaintiffs' FOIA response, NASA did not provide any
5 1999 compliance data. On information and belief, NASA is in
6 violation of the Act's requirement that 75 percent of the covered
7 vehicles NASA acquired in 1999 must be AFVs. In its response to
8 Plaintiffs' FOIA response, NASA did not provide any 2000 compliance
9 data. On information and belief, NASA is in violation of the Act's
10 requirement that 75 percent of the covered vehicles NASA acquired
11 in 2000 must be AFVs.

12 138. Defendant USPS is in violation of the Energy Policy Act's
13 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). In
14 its response to Plaintiffs' October 24, 2001 FOIA request, USPS
15 stated that 28 percent of the covered vehicles USPS acquired in
16 1997 were AFVs rather than the 33 percent required by law. In
17 1997, USPS was approximately 137 AFVs short of the Act's
18 requirement.

19 **II. All Defendants Are In Violation of The Act's Public Reporting**
20 **Requirements**

21 139. Defendant DOE has failed to place its annual federal
22 fleet AFV compliance report on a publicly available website and
23 failed to notify the public of the reports' existence and location

1 through publication of this information in the Federal Register as
2 required by Energy Policy Act section 13218. See 42 U.S.C. §
3 13218(b).

4 140. Defendant Commerce has failed to place its annual federal
5 fleet AFV compliance report on a publicly available website and
6 failed to notify the public of the reports' existence and location
7 through publication of this information in the Federal Register as
8 required by Energy Policy Act section 13218. See 42 U.S.C. §
9 13218(b).

10 141. Defendant DOD has failed to place its annual federal
11 fleet AFV compliance report on a publicly available website and
12 failed to notify the public of the reports' existence and location
13 through publication of this information in the Federal Register as
14 required by Energy Policy Act section 13218. See 42 U.S.C. §
15 13218(b).

16 142. Defendant DOI has failed to place its annual federal
17 fleet AFV compliance report on a publicly available website and
18 failed to notify the public of the reports' existence and location
19 through publication of this information in the Federal Register as
20 required by Energy Policy Act section 13218. See 42 U.S.C. §
21 13218(b).

22 143. Defendant DOJ has failed to place its annual federal
23 fleet AFV compliance report on a publicly available website and
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1 failed to notify the public of the reports' existence and location
2 through publication of this information in the Federal Register as
3 required by Energy Policy Act section 13218. See 42 U.S.C. §
4 13218(b).

5 144. Defendant GSA has failed to place its annual federal
6 fleet AFV compliance report on a publicly available website and
7 failed to notify the public of the reports' existence and location
8 through publication of this information in the Federal Register as
9 required by Energy Policy Act section 13218. See 42 U.S.C. §
10 13218(b).

11 145. Defendant DVA has failed to place its annual federal
12 fleet AFV compliance report on a publicly available website and
13 failed to notify the public of the reports' existence and location
14 through publication of this information in the Federal Register as
15 required by Energy Policy Act section 13218. See 42 U.S.C. §
16 13218(b).

17 146. Defendant DOT has failed to place its annual federal
18 fleet AFV compliance report on a publicly available website and
19 failed to notify the public of the reports' existence and location
20 through publication of this information in the Federal Register as
21 required by Energy Policy Act section 13218. See 42 U.S.C. §
22 13218(b).

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1 147. Defendant NRC has failed to place its annual federal
2 fleet AFV compliance report on a publicly available website and
3 failed to notify the public of the reports' existence and location
4 through publication of this information in the Federal Register as
5 required by Energy Policy Act section 13218. See 42 U.S.C. §
6 13218(b).

7 148. Defendant EPA has failed to place its annual federal
8 fleet AFV compliance report on a publicly available website and
9 failed to notify the public of the reports' existence and location
10 through publication of this information in the Federal Register as
11 required by Energy Policy Act section 13218. See 42 U.S.C. §
12 13218(b).

13 149. Defendant USDA has failed to place its annual federal
14 fleet AFV compliance report on a publicly available website and
15 failed to notify the public of the reports' existence and location
16 through publication of this information in the Federal Register as
17 required by Energy Policy Act section 13218. See 42 U.S.C. §
18 13218(b).

19 150. Defendant HHR has failed to place its annual federal
20 fleet AFV compliance report on a publicly available website and
21 failed to notify the public of the reports' existence and location
22 through publication of this information in the Federal Register as
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1 required by Energy Policy Act section 13218. See 42 U.S.C. §
2 13218(b) .

3 151. Defendant HUD has failed to place its annual federal
4 fleet AFV compliance report on a publicly available website and
5 failed to notify the public of the reports' existence and location
6 through publication of this information in the Federal Register as
7 required by Energy Policy Act section 13218. See 42 U.S.C. §
8 13218(b) .

9 152. Defendant DOL has failed to place its annual federal
10 fleet AFV compliance report on a publicly available website and
11 failed to notify the public of the reports' existence and location
12 through publication of this information in the Federal Register as
13 required by Energy Policy Act section 13218. See 42 U.S.C. §
14 13218(b) .

15 153. Defendant State has failed to place its annual federal
16 fleet AFV compliance report on a publicly available website and
17 failed to notify the public of the reports' existence and location
18 through publication of this information in the Federal Register as
19 required by Energy Policy Act section 13218. See 42 U.S.C. §
20 13218(b) .

21 154. Defendant Treasury has failed to place its annual federal
22 fleet AFV compliance report on a publicly available website and
23 failed to notify the public of the reports' existence and location

1 through publication of this information in the Federal Register as
2 required by Energy Policy Act section 13218. See 42 U.S.C. §
3 13218(b).

4 155. Defendant NASA has failed to place its annual federal
5 fleet AFV compliance report on a publicly available website and
6 failed to notify the public of the reports' existence and location
7 through publication of this information in the Federal Register as
8 required by Energy Policy Act section 13218. See 42 U.S.C. §
9 13218(b).

10 156. Defendant USPS has failed to place its annual federal
11 fleet AFV compliance report on a publicly available website and
12 failed to notify the public of the reports' existence and location
13 through publication of this information in the Federal Register as
14 required by Energy Policy Act section 13218, See 42 U.S.C. §
15 13218(b).

16 **III. Defendant DOE Has Violated The Act's Private And Municipal**
17 **Fleet Provisions**

18 157. Defendant DOE has missed its January 1, 2000 deadline for
19 determining through rulemaking whether a private and municipal
20 fleet requirement program is necessary to comply with the Act's
21 clean air and energy security goals.

22 158. DOE complied with the first step of the mandatory fleet
23 requirement program rulemaking by publishing an advance notice of

1 proposed rulemaking to evaluate the progress made toward achieving
2 the 10 and 30 percent oil consumption reduction goals of the Act as
3 required under Energy Policy Act section 13257(a)(3). Alternative
4 Fueled Vehicle Acquisition Requirements for Private and Local
5 Government Fleets, Advance Notice of Proposed Rulemaking and Notice
6 of Public Hearings, 61 Fed. Reg. 41032 (Aug. 7, 1996).

7 159. DOE held three regional hearings in Dallas, TX,
8 Sacramento, CA, and Washington, D.C. and invited the public to
9 express oral views, data, and arguments on the proposed rulemaking
10 and submit written comments. Id.

11 160. DOE was unable to meet the December 15, 1996 deadline for
12 early rulemaking. Notice of Termination of Proposed Rule, 62 Fed.
13 Reg. 19701 (Apr. 23, 1997). As a result, the Act requires DOE to
14 follow the later rulemaking procedures. Under these procedures,
15 DOE was required to begin rulemaking by April 1998, 42 U.S.C. §
16 13257(c)(c), and publish a proposed rule for a fleet requirement
17 program before May 1, 1999, with hearings and public comment to
18 follow. 42 U.S.C. §§ 13257(d).

19 161. DOE was required to issue a final rule determining
20 whether a fleet requirement program is or is not necessary by
21 January 1, 2000. Id. at §§ 13257(e)(1), 13257(f)(2), 13257(g)(1).

22 162. On April 17, 1998, DOE published an advance notice of
23 proposed rulemaking and notice of public hearings for the Act's

private and municipal fleet requirement. Advance Notice of Proposed Rulemaking and Notice of Public Hearings, 63 Fed. Reg. 19372 (Apr. 17, 1998). DOE held public hearings in Los Angeles, CA, Minneapolis, MN, and Washington, D.C. Id. DOE missed its May 1, 1999 deadline for issuing a proposed rule.

163. The Act authorizes the Secretary of DOE to take advantage of a one-time extension of the January 1, 2000 deadline for 90 days, which the Secretary did on December 29, 1999. Advance Notice of Proposed Rulemaking; Extension of Deadline, 65 Fed. Reg. 1831 (Jan. 12, 2000). As a result, DOE's final determination was due on April 1, 2000. However, DOE still has not even issued the proposed rule due on May 1, 1999, a deadline with no statutory provision for an extension.

164. Even though the Energy Policy Act has no other deadline extension provisions, in July 2000, DOE announced that it is "pausing its rulemaking efforts regarding whether and what to propose as regulatory requirements on local government and private fleets with respect to alternative fueled vehicles until after consultations with State and local government officials have occurred." Notice of Public Workshops and Opportunity for Public Comment, 65 Fed. Reg. 44987 (July 20, 2000).

165. In a separate publication, DOE provided the following tentative timetable for complying with the fleet requirement

1 program deadlines: (1) it will meet the May 1, 1999 deadline by May
2 2001; and (2) it will meet the January 1, 2000 deadline by January
3 2002. Unified Agenda, 65 Fed. Reg. 73763, 73764 (Nov. 30, 2000).

4 **FIRST CLAIM FOR RELIEF**

5 (Violation of the Energy Policy Act, 42 U.S.C. § 13212(b)(1))

6 166. Each and every allegation set forth above in the
7 Complaint is incorporated herein, by reference.

8 167. Defendants Commerce, DOI, DOJ, GSA, DVA, DOT, NRC, EPA,
9 USDA, DOD, HHS, HUD, DOL, State, Treasury, NASA, and USPS have
10 violated the Energy Policy Act by failing to meet the Energy Policy
11 Act federal fleet acquisition requirements. 42 U.S.C. §
12 13212(b)(1). This failure constitutes agency action unlawfully
13 withheld, unreasonably delayed, and contrary to law within the
14 meaning of the APA, 5 U.S.C. § 706(1).

15 **SECOND CLAIM FOR RELIEF**

16 (Violation of the Energy Policy Act, 42 U.S.C. §13218(b)(1)-(3))

17 168. Each and every allegation set forth above in the
18 Complaint is incorporated herein, by reference.

19 169. All Defendants have failed to make AFV acquisition
20 compliance reports available to the public on the Internet and
21 notify the public of the existence and location of these reports
22 through publication of this information in the Federal Register.
23 Defendants' failure to comply with section 13218 of the Energy

1 Policy Act constitutes agency action unlawfully withheld,
2 unreasonably delayed, and contrary to law within the meaning of the
3 APA, 5 U.S.C. § 706(1).

4 **THIRD CLAIM FOR RELIEF**

5 (Violation of the Energy Policy Act, 42 U.S.C. § 13257)

6 170. Each and every allegation set forth above in the
7 Complaint is incorporated herein, by reference.

8 171. Defendant DOE has violated section 13257 of the Energy
9 Policy Act by failing to issue a proposed rule and final
10 determination on the necessity of a private and municipal fleet
11 program by May 1, 1999 and April 1, 2000 respectively as required
12 by the Energy Policy Act. Defendant's failure constitutes agency
13 action unlawfully withheld, unreasonably delayed, and contrary to
14 law within the meaning of the APA, 5 U.S.C. § 706(1).

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs request that this Court enter judgment
17 providing the following relief:

18 1. Declare that Defendants Commerce, DOI, DOJ, GSA, DVA, DOT,
19 NRC, EPA, USDA, DOD, HHS, HUD, DOL, State, Treasury, NASA, and USPS
20 are in violation of their nondiscretionary duties under 42 U.S.C. §
21 13212(b)(1).

- 1 2. Declare that all Defendants are in violation of their
2 nondiscretionary duties under 42 U.S.C. § 13218(b) of the Energy
3 Policy Act;
- 4 3. Declare that Defendant DOE is in violation of its
5 nondiscretionary duties under 42 U.S.C. § 13257 of the Energy
6 Policy Act;
- 7 4. Order Defendants Commerce, DOI, DOJ, GSA, DVA, DOT, NRC, EPA,
8 USDA, DOD, HHS, HUD, DOL, State, Treasury, NASA, and USPS to comply
9 with 42 U.S.C. § 13212(b)(1) of the Energy Policy Act.
- 10 5. Order Defendants Commerce, DOI, DOJ, GSA, DVA, DOT, NRC, EPA,
11 USDA, DOD, HHS, HUD, DOL, State, Treasury, NASA, and USPS to offset
12 future conventional vehicle purchases with the number of AFVs
13 necessary to bring Defendants into compliance with the Act's 1996,
14 1997, 1998, 1999, 2000 and 2001 percentage requirements.
- 15 6. Order all Defendants to comply with 42 U.S.C. § 13218 of the
16 Energy Policy Act;
- 17 7. Order Defendant DOE to comply with 42 U.S.C. § 13257 of the
18 Energy Policy Act;
- 19 8. Retain jurisdiction over this action to ensure compliance with
20 the Court's decree;
- 21 9. Award Plaintiffs their costs of litigation, including
22 reasonable attorneys' fees; and
- 23 10. Grant such other relief as the Court deems just and proper.

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4 Dated December 27, 2001.

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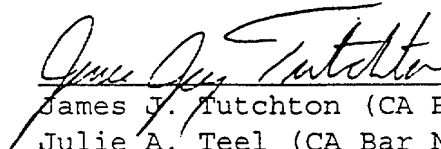
Respectfully submitted,

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